IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-06-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.17107 OF 1994

Paul Sudhindran
Priyadarshini Apartments,
Beracah Road, Kilpauk,
Madras 600 012. .. Petitioner

.Vs.

1. The State of Tamiil Nadu,
   rep. by its Secretary to Govt.,
   Housing & Urban Development
   Department, Madras 9.

2. The Chairman-cum-Managing Director,
   Tamil Nadu Housing Board,
   Nandanam, Anna Salai,
   Madras 600 035.

3. The Special Tahsildar (III)
   Land Acquisition,
   Tamil Nadu Housing Board, Mogappair,
   Madras.

4. Chennai Metropolitan Development Authority,
   rep. by its Member Secretary,
   Chennai.

5. The Corporation of Chennai,
   rep. by its Commissioner,
   Chennai. .. Respondents

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Respondents 4 & 5 suo motu
impleaded as per order dt.
17.4.04 in WP.17107/94

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the entire records of the first respondent in his proceedings made under Section 4(1) of the Land Acquisition Act in G.O.Ms.No.88, Housing and Urban Development Department fated 17.1.1989 followed by Section 6 declaration in G.O.Ms.No.488 dated 6.6.1990 and quash the same as illegal, arbitrary and without authority of law and discriminative, insofar as the land comprised in R.S.No.3189 to an extent of 19 grounds and 909 sq.ft., and R.S.No.3185/45 of an extent of 1 ground and 1708 sq.ft., in Block No.56, Purasawalkam Village, Purasawalkam, Perambur Taluk, Madras District and consequently direct the respondents to forbear from interfering with the petitioners right over the property comprised in R.S.No.3189 and the access property in R.S.Nos.3185/45, 3185/46, 3185,59 and 3185/60.

For Petitioner : Mr.G. Anbumani for
M/s.N.L. Rajah &
T. Mohan

For Respondents 1&3: Mr. N.R.Chandran
Advocate General
assisted by Ms.G. Kavitha
Govt. Advocate

Respondent-2 : Mr.D. Veerasekaran
Respondent-4 : Mr.K.A. Ravindran
Respondent-5 : Mr.C. Ravichandran

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J U D G M E N T

The petitioner has prayed for issuing a writ of certiorarified mandamus for quashing the land acquisition proceedings as per G.O.Ms.No.88 dated 17.1.1989, followed by declaration under Section 6 as per G.O.Ms.No.488 dated 6.6.1990 so far as it relates to the land comprised in R.S.No.3189 to an extent of 19 grounds and 909 sq.ft., and R.S.No.3185/45 of an

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extent of 1 ground and 1708 sq.ft., in Block No.56, Purasawalkam Village, Purasawalkam, Perambur Taluk, Madras District and to forbear the respondents from interfering with the right of the petitioners in respect of the said land comprised in R.S.No.3189 and the access property in R.S.Nos.3185/45, 3185/46, 3185,59 and 3185/60.

2. Petitioner is the Secretary of the Priyadarshini Apartments Residents Welfare Association, a Society registered under the Societies Registration Act. Two officers of Reserve Bank of India, namely, J.W. Francis and S. Rajamanito floated a scheme to construct a residential complex for the employees of the Reserve Bank of India. The work of identifying the site, purchasing the same, constructing the residential complex, arranging for registration of undivided interest and all other incidental works were to be rendered by one Baskara Constructions, a partnership firm (hereinafter referred to as "the Promoters"). The Promoters identified suitable extent of land at Beracah Road, Kilpauk, belonging to nine persons appertaining to R.S.No.3189 measuring 19 grounds 909 sq.ft. and R.S.No.3185 measuring one ground 1708 sq.ft in 1987 and thereafter the respective undivided interest of various members of the Association were registered with the authorities. The Promoters also purchased an extent of 4 grounds appertaining to R.S.Nos.3185/45, 3185/46, 3185,59 and 3185/60 to provide access to the residential complex as the original proposed access was not found appropriate. Accordingly, the Promoters submitted a revised plan. Permission for demolition was granted on 31.10.1998 and the Corporation of Madras granted permission for construction in B.A.No.876/88-08916 dated 3.11.1998. In such application, R.S.Nos.3185/45, 3185/46, 3185,59 and 3185/60 were shown as the access land. From out of the funds invested by the members of the Association, Promoters paid Rs.1,59,500/- on 11.12.1987 and open space reservation charges of Rs.1,51,200/- was paid on the same day. The Reserve Bank of India has advanced loan to various employees (members of the Association). The construction activity was commenced by the Promoters in 1988 and by 1989 the ground floor on atleast 3 blocks out of the sanctioned 5 blocks were almost complete. Because of some internal dispute between the members of the Association and the promoters, possession was not handed over and ultimately, on the intervention of the State Consumer Redressal Commission, on the basis of a compromise, possession was delivered. During pendency of such dispute, it was disclosed by the promoters that

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W.P.No.7379 of 1990 has been filed by J.W. Francis, one of the Co-ordinators of the project, challenging Land Acquisition Proceeding. On behalf of the Association, a suit was also filed against the Promoters before the City Civil Court in O.S.No.9676 of 1993 seeking for permanent injunction restraining the Promoters from alienating the access property appertaining to R.S.Nos.3185/45, 3185/46, 3185,59 and 3185/60. In such suit, the Promoters filed a written statement and in such written statement they took the stand that the access property was the subject matter of the land acquisition proceedings. According to the petitioner, land acquisition notification under Section 4(1) does not relate to R.S.Nos.3185/45, 3185/46, 3185,59 and 3185/60. The Promoters also took the stand that the Housing Board had gifted the said property to the Corporation for being utilised as a road. While the matter stood thus, the members of the Association learnt from the Housing Board that the Housing Board is trying to take possession after the land acquisition proceedings was over. The petitioner also learnt that W.P.No.7379 of 1990 had been adjourned to enable the writ petitioner (J.W. Francis) to move the Government for exemption and only in September, 1994, the members of the Association learnt regarding withdrawal of the writ petition by said J.W.Francis. In such background, the petitioner filed the present writ petition.

3. The legal contentions raised in the writ petition are to the effect that even though the members of the Association had purchased undivided interests in the lands sought to be acquired in 4(1) Notification, names of the previous owners had been indicated. It is further contended that Notification under Section 4(1) was published in the Government Gazette on 8.3.1989 but the declaration under Section 6 was only published on 6.6.1990, after the statutory period of one year. It is further contended that no notice was served on the members of the Association individually and as such they had no opportunity of participating in the enquiry held under Section 5-A of the Land Acquisition Act. It is also contended that construction work had commenced after taking permission from MMDA and Corporation and such factor should have been considered. It is also contended that the object sought to be achieved by acquisition is to provide house sites to the low and middle income group employees and since such purpose had been achieved by constructing residential complex by the employees of Reserve Bank of India, to that extent, the notification was illegal and arbitrary. The land acquisition

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proceedings is not for public purpose in the sense that it is to defeat the aspiration of various occupants of the residential complex.

4. Two separate counter affidavits have been filed, one on behalf of Respondent No.2, the Tamil Nadu Housing Board and the other on behalf of Respondents 1 and 3,namely, the State of Tamil Nadu and the Special Tahsildar, Land Acquisition. In the counter affidavit filed on behalf of the Housing Board it has been stated that on the basis of the requisition of the Chairman, Tamil Nadu Housing Board, action was initiated to acquire land to an extent of 115 grounds 1298 sq.ft in S.No.3185/2, Block No.56, Purasawalkam village for implementing the Housing Scheme by the Tamil Nadu Housing Board. Notification under Section 4(1) of the Land Acquisition Act was published in the Tamil Nadu Government Gazette on 8.3.1989 and thereafter necessary publication was made in Tamil dailies Makkal Kural and Murasoli on 1.6.1989 and 8.6.1989 respectively. Locality publication was made on 8.6.1989. An errata to 4(1) notification was published in the Government Gazette Supplement dated 5.7.1989. Enquiry under Section 5-A was conducted on 16.8.1989, 24.8.1989, 11.9.1989, 18.9.1989, 16.10.1989, 19.10.1989 and completed on 25.10.1989. The gist of the objections filed by the land owner during the course of 5A enquiry was communicated to the Chairman and the Managing Director of the Housing Board in reference D1.2020/87 dated 31.10.1989. The Chairman in his letter dated 16.5.1990 had informed and recommended to over-rule the objections raised by the land owners and he had made an endorsement that the structures have come up only after notification under Section 4(1). Copy of the remarks was communicated to the land owners by Communication No.D1.2020/87 dated 16.5.1990. Enquiry under rule 3(b) was conducted on 25.5.1990. The land owners appeared at the enquiry and filed objections. At the time of enquiry under Rule 3(b), J.W. Francis, Co-ordinator, Reserve Bank of India Employees Organisation and Muthukrishnan Reddy, Building Promoter, pleaded that buildings were existing at the time of 4(1) notification and requested exclusion of land in s.No.3189 of Purasawalkam village. The Land Acquisition Officer had inspected the land on 25.5.1989, subsequent to the publication of 4(1) notification, the land bearing S.No.3189 consisting of two basements with pillars and two basements raised upto two feet level and further construction was under progress. The Land Acquisition Officer over-ruled the objection and sent draft declaration proposal on 29.5.1990. The

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Government approved the draft declaration as per notification dated 6.6.1990, within the stipulated period and it was published in the Gazette on 6.6.1990. The substance was also published in the newspapers and at that stage, J.W. Francis filed W.P.No.7379 of 1990 challenging the 4(1) notification and Section 6 declaration. The High Court by order dated 29.6.1991 had observed *"Liberty is reserved to the petitioner for the time being to enable him to move the Government as well as the Housing Board so that necessary exemption from the acquisition proceedings could be granted. Adjourned by six weeks for that purpose."* On the basis of the aforesaid observation, the matter was placed before the Board Meeting on 31.3.1992 and the Board resolved, :

> "... to exclude the Land measuring an extent of 21 grounds and 0217 sq.ft in S.No.3185/95 and 3189 of Purasawalkkam village from the Land Acquisition proposal of Tamilnadu Housing Board Schemes and recommended to the Government for approval as per the directions of the High Court in the W.P. filed by the co-ordinator R.B.I. Employees Housing Scheme. As resolved by the Board in Resolution No.8.04 dated 31.3.92 the Government in their Lr.No.43735/LA.II-2/90-7 dated 25.5.92 have stated that on perusal of the type sketch of the scheme area it was noticed that the land sought to be excluded (i.e.) right in the middle of the scheme and it was not clear why the Tamilnadu Housing Board has not recommended collection of development charges from the applicant organisation and requested the Housing Board to clarify the above points."

Subsequently, after observing all the formalities, Award No.3/92 dated 5.6.1992 was passed due to urgency for the acquisition of entire lands. It was indicated that *"The award has to be passed within three years from the date of 4(1) notification, award was passed for the entire land due to urgency."* It is the further stated :

> " Further in response to Government letter dated 25.5.92 stated above, the Housing Board wanted to collect the developmental charges from R.B.I. Housing Schemes and felt that once lands proposed for R.B.I. are excluded, then there will be no approach to the lands in S.No.3190/1-3, 3191/1-3, etc. Therefore it was suggested that S.No.3185/45 proposed for exclusion be

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retained for providing approach to the S.Nos.3190/1-3, 3191/1-3 etc., The Board also wanted to suggest to Government that an approach road of minimum 40' road in S.No.3189 be earmarked in order to reach the S.No.3188/14, 15 and 3188/2 as there was a chance of using the development work of the Housing Board by the R.B.I. Employees Housing Scheme. Hence it was proposed to collect the developmental charges from the R.B.I. Employees Housing Schemes for the land proposed for exclusion in S.No.3189. Accordingly the matter was placed before the Board for taking a decision on the following :

1) Collection of developmental charges from the lands vested with R.B.I. Employees Housing colony.

2) Obtaining of lands in S.Nos.3185/45 which was already resolved by the Board for exclusion.

3) To provide 40' road width approach road for Tamilnadu Housing Board land through S.No.3189 and deleting the rest of S.No.3189 from Land Acquisition."

It has been further stated :

"8. With regard to para 6 it is submitted that as per the directions of the High Court in W.P.No.7379/90 on 29.6.91, the Housing Board wanted to exempt the lands in which R.B.I. Employees Housing Scheme has started construction work even prior to publication of 4(1) notification and passed a resolution to exempt the lands from acquisition and addressed the Government for approval. The Government in their Letter No.4375/LA.II-2/90-7 dated 25.5,.92 have pointed out that the land proposed for exclusion is right in the middle of the scheme and it was not clear why the Tamilnadu Housing Board has not recommended collection of developmental charges from the R.B.I. Employees Housing Scheme and requested the Tamilnadu Housing Board to clarify this. The Board again placed the matter before the Board and resolved to collect the developmental charges and exclusion of the lands."

In the counter it is further indicated that notice under Section 5-A enquiry was served on the co-ordinator and the co-ordinator had availed the opportunity and filed objection at the time of

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enquiry. It is further stated that declaration under Section 6 has been made within the stipulated period.

5. Counter affidavit filed on behalf of the State Government is substantially the same.

6. In course of hearing it was suggested by the learned Advocate General, who was appearing at that stage, that the requirement of the Housing Board is that an access is to be provided in continuation of the road passing through the Housing Board complex constructed for the Income Tax Officers through the Housing Complex of R.B.I. Employees between 3rd and 4th Blocks. To find out about the viability of such proposal and also to find out about the existence of any alternative access to the undisputed vacant site belonging to Tamil Nadu Housing Board on the Southern side of the Housing Board complex belonging to the Association, two Advocates were appointed as Commissioners to inspect and submit their report by order dated 24.12.2003. The Advocate Commissioners inspected the site and the surrounding area and have submitted a report. The relevant portions of the said report are extracted hereunder :-

> "4. As per the 1st condition stipulated in the order of this Hon'ble Court, whether a 40 feet wide road is available on the eastern side abutting the green marked portion of the layout, which has been acquired for the purpose of the Tamil Nadu Housing Board (TNHB), we have the following observations to make, the said road was measured to be 40 feet. But the said Road seems to be a garbage dump marked as Annexure No.B. There is a drainage line laid on the said path. On the said road two premises have their main entrance, one is the Guild of service marked as Annexure No.F and another is an ITI Institute which is not open, although the buildings are completed marked as Annexure No.E. The Guild of Service is located on the North East side of the Priyadarshini Apartments, on the backside of the Income Tax Quarters. The Road upto Guild of Service is a bumpy dirt road. But the road after that till the housing board vacant site is a garbage dump which has a small footpath. The 40 feet road can be accessed by the Subbaryan Main Road which measures 24 feet. From the Subbarayan Main Road, a left turn has to be taken through the Subbarayan 5th street to access the 40 feet wide road. The Subbarayan

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5th street measures 19.5 feet.

5. As per the 2nd condition stipulated by this Hon'ble Court whether there is any alternative road which can be used for the proposed T.N.H.B. Complex. We have the following observation to make. There seems to exist a alternative road which is a large tract of land belonging to the Chennai Corporation, takes a left turn runs around the ITI Institute, through a erstwhile garbage dump, wherein dumping of garbage was abandoned wayback in 1994, which leads to the Brick Klin road. The alternative road runs straight from the vacant TNHB site.

6. As per the 3rd condition stipulated by the Hon'ble Court, the width of the area available between Block No.3 and Block No.4 of the Reserve Bank Employees Housing complex marked as Annexure Nos: G & H was measured to be 30 feet and the length of the area available between Block No.3 and Block No.4 of the Reserve Bank Employees Housing complex was measured to be 62 feet.

7. In compliance of the orders of the Hon'ble court we have come to the following conclusion,

a) The 40 feet dirt road will be a viable road for accessing the vacant TNHB Housing site if it is properly levelled and developed. However the approach road to 40 feet road, the Subbarayan Main Road is only 24 feet in width will restrict the movement of heavy vehicles to the vacant TNHB vacant site. The smaller width of the Subbarayan main road curtails the development of the vacant TNHB site and the area beyond this site. Hence it is inevitable to explore a alternative road to the vacant TNHB site.

b) As per the 2nd condition stipulated by this Hon'ble Court whether there is any alternative road which can be used for the proposed T.N.H.B Complex. We have the following observations to make. There seems to exist a alternative road which is a large tract of land belonging to the Chennai Corporation, takes a left turn marked as Annexure No.I and J runs through a erstwhile garbage dump,wherein dumping of garbage was abandoned wayback in 1994, marked as Annexure No.K & L which leads to the Brick Kiln road passing through a bridge marked as Annexure No.M. The alternative road runs straight

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from the vacant TNHB site. The Brickiln Road which is a main road leads to the Purasawalkam Main Road."

7. After such report was furnished, it was felt necessary to hear CMDA and the Corporation of Chennai and accordingly they were impleaded as fourth and fifth respondents.

8. A report has been filed on behalf of 4th respondent, C.M.D.A., stating as follows :-

" This Respondent's Official inspected the site under reference on 9.8.2004 and observed that the TNHB site (Vacant land) is not abutting a formed public road. The width of the road portion abutting the land on the north of the site under reference varies from 39'0" to 43'.6" which is also under formation. This road under formation is also gaining access from the existing road of width 23'.9" i.e. Subbarayan Main Road and 19'.3" wide Subbarayan Nagar 5th street as indicated in the plan annexed. As the abutting road is not a public road and the width of the connected public road is less than 10m., the construction of Special Building is not permissible as per Development Control Rules 19(b)(ii)(a)."

9. On behalf of the Chennai Corporation, a report signed by Zonal Officer and the Executive Engineer has been submitted, which is to the following effect :-

" A road leading from Suburayan 5th Street to Guild of Service is about 120.0 Mts. length and 12.0 Mts. Wide is now filled with debris and garbage's while doing levelling for the construction of polytechnic at Otteri Dumping Ground land.

It is proposed to clear all the debris and garbage's from the said road and making the road free for traffic. the existing road is from Suburayan 5th Street to Guild of Service. There is no road after Guild of Service upto T.N.H.B. land (vacant sites).

There is no possibility for provision of access from Bricklin Road to T.N.H.B. land vacant sites. The land between Bricklin Road and T.N.H.B. sites belongs to Corporation of Chennai. The said Corporation land is

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also being protected by constructing a compound wall an the works are under progress."

10. An objection has been filed by the Tamil Nadu Housing Board to the Advocate Commissioners' report raising certain difficulties in accepting the report.

11. The questions raised have factual as well as legal ramifications. First of all it is desirable to consider the legal aspect. The first contention of the counsel for the petitioner is to the effect that 4(1) notification, which was published after the main property now in dispute was purchased, namely, R.S.No.3189, did not contain the names of the purchasers. The petitioner, who has filed this writ petition as the Secretary of a Society, has filed his own sale deed. It is the assertion that most of the members had purchased undivided interest and the names should have been indicated in 4(1) notification. I do not think such a contention can be accepted because it is not the case of the petitioner that after such purchase, the names of the purchasers had been recorded in the Revenue records. It is obvious that the names available in the Revenue Records at the time of 4(1) notification were taken into consideration. Therefore, the mere fact that the names of the purchasers had not been indicated cannot have the effect of vitiating the 4(1) notification.

12. The next contention is that no opportunity was given to the purchasers during 5-A enquiry. It has been submitted that the names of the purchasers had been disclosed by J.W. Francis, who was one of the purchasers. The stand of the contesting respondent is that such J.W. Francis had filed objection and he had been given opportunity during 5-A enquiry. It is true that J.W. Francis has been described as the Co-ordinator of the Priyadarshini Apartments Residents Welfare Association in some of the papers. However, from the materials on record, it is apparent that the Society was registered for the first time in 1993. Even in the letter dated 14.8.1989 written by J.W. Francis, he has been merely described as an Officer of the Reserve Bank of India. In such letter, copy of which was also addressed to the Special Tahsildar (Land Acquisition), a list of employees, who had purchased S.No.3189, had been indicated. It is thus obvious that the names of various purchasers were made known to the Land Acquisition Officer during 5-A enquiry. Once the Tahsildar was

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made aware of the interest of several persons, who had purchased the property before issuance of 4(1) notification, principles of natural justice require that notices should have been issued to such purchasers having interest in the property sought to be acquired. This becomes clear from the Full Bench decision of this Court in A.I.R. 1989 Madras 222 (P.C. THANIKAVELU v. SPECIAL DEPUTY COLLECTOR, LAND ACQUISITION, MADRAS), wherein it was observed :-

> " In such cases, if it is brought to the notice of the Collector by the erstwhile land owner or by any other person including the present owner thereof, of the names of interested persons, the Collectors as a statutory functionary cannot decline to afford an opportunity to the person who is really interested in the land and close the enquiry. When such information is brought to the notice of the Collector, it is needless to say that the principles of natural justice enjoin upon him an obligation to issue notice to the person who is found to be really interested in the land even thought his name may not be found entered in the revenue records. It is true that the Government has the prerogative to acquire lands belonging to individuals for a public purpose sanctioned under "the theory of eminent domain". But the rule of law which governs and controls the executive functions in the thread that runs through the fabric of constitutional democracy, the rule of law behoves the Government to act fairly and reasonably and the principles of natural justice are the quintessence of such fair play and reasonableness. The decision reported in Padmavathi v. State of Tamil Nadu (1978 (91) Mad L.W.80) does not reflect the true statement of law. The Supreme Court has held in Swadeshi Cotton Mills v. Union of India (AIR 1981 S.C.818) that even in the absence of express reference to observance of principles of natural justice, such principles should be followed whenever it affects the rights of parties. It cannot be gain said that when the lands of an individual are acquired, albeit he may be paid compensation, his civil rights may be affected. It is therefore elementary that, to be consistent with the principles of natural justice, such a person should be put on notice before his lands are acquired and his objection heard and considered. The enquiry

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contemplated under S.S.A of the Act would be full and complete only when the person who is really interested in the land is put on notice. But, at the same time, it is made clear that individual notice is mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested on information received through reliable source."

13. Such decision has been subsequently followed by a Division Bench reported in 2000 W.L.R. 519 (LAKSHMANAN v. THE GOVERNMENT OF TAMIL NADU, REP. BY ITS SECRETARY TIO THE GOVERNMENT, ADI DRAVIDAR AND TRIBAL WELFARE DEPARTMENT, CHENNAI AND ANOTHER).

14. The next connected question is whether it can be said that notice on J.W. Francis, which is purported to be served on behalf of other members of the Association, is a sufficient notice for all the purchasers. It is no doubt true that J.W. Francis had taken a leading role in negotiating and completing the transaction of sale and he has been described as the Co-ordinator in many places. However, there is nothing to indicate that he was formally elected as Secretary of any Society. As a matter of fact, as already indicated, the Society was registered only in the year 1993. Before that it cannot be said that there was any Society in existence nor it can be said that all the members of the Society were represented through the "so called Co-ordinator". It is of course true that he was a well-wisher of all the purchasers and he had taken steps to protect their interest, but, that will not equate him as an authorised agent entitled to represent them in legal proceedings, and others cannot be held to be legally bound by his action or inaction, even though they may be the ultimate beneficiaries. Therefore, service of notice for hearing of objections on J.W. Francis cannot be held to be sufficient for the purpose of considering the question of validity of proceedings under Section 5-A of the Land Acquisition Act. Similarly, the very fact that such person had filed a writ petition, which was ultimately withdrawn, would not be binding on the other purchasers or the members of the Society.

15. A question may arise that land acquisition proceedings was initiated in 1989 and declaration under Section 6 had been made in 1990, and award has been made in 1993, and

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therefore, the writ petition filed in 1994 is hit by principles of laches. However, in the peculiar facts and circumstances of the present case, I do not think that the writ petition is hit by the principles of laches. The land was acquired for the purpose of construction of a housing complex by the Housing Board. Undisputedly physical possession of the property in question had not been taken by the Housing Board. On the other hand by the time the writ petition was filed, the Housing complex for the benefit of the employees of Reserve Bank had been completed and possession had been handed over through a long drawn process in view of the dispute between the purchasers and the builder. Since the purchasers were continuing in their struggle to protect their right in different Forums, which was to the knowledge of the Housing Board as well as the State Government, in the absence of any prejudice caused to the respondents, it cannot be said that the writ petition is barred by the principles of laches or acquiescence. In this connection it is to be noted that even at one stage the Housing Board itself, on whose request the land has been acquired, had indicated that the present disputed property, namely, R.S.No.3189, may be excluded from the land acquisition. The State Government, however, raised certain query and only on the basis of such query raised by the State Government, the Housing Board changed its decision and thereafter the award was passed. It is thus obvious that the matter was under consideration and in such view of the matter the fact that the Association had not filed the writ petition immediately cannot be considered as a point to negative the claim of the petitioner.

16. During pendency of the writ petition, the matter relating to exclusion of certain property from acquisition was also consideration. It appears that the Housing Board has been prodded by the State Government and given suggestion that the beneficiaries of Priyadarshini Apartments Residents Welfare Association should be called upon to pay developmental charges and 40 feet wide should be provided through the complex, obviously with a view to connect the vacant portion now under the possession of the Housing Board with the constructed portion on the Northern side of the petitioner's Housing Complex. A further condition was also indicated about the plot which provided the access. The correspondences between the Housing Board, the State Government and the Employees Association throw light on such aspects. It appears that the Housing Board is apprehending that there may not be sufficient wide road available for the purpose of constructing

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a complex on the vacant portion which is on the South East portion of the present housing complex of Reserve Bank of India employees. So far as the approach road connecting Beracah Road is concerned, from the letter written on behalf of the Association, it is apparent that such land is being used only as a road by the Association and the Association had undertaken that such land will not be used for any other purpose. In course of hearing of the writ petition, it has been submitted on behalf of the petitioner that the Association has no objection if such land is used as a road by all concerned, including the general public. The acquisition sought for is for the purpose of access to Barracah Road. Therefore, such property need not be excluded from the land acquisition property. However, this is subject to clear direction that such property shall be utilised only as a road by the Housing Board as well as the members of the Association and such land can also be used by other members of the public.

17. As already indicated, in course of various correspondences it has been suggested that 40" wide road may be made available through the Housing complex of the Association. The Association has raised certain objections for such suggestion, mainly taking into consideration the safety and security of the residents. It is also pointed out by the Association that as a matter of fact the distance between two blocks, namely Block No.2 and Block No.3 is less than 30" and therefore, it is practically impossible to provide any road through two blocks of houses. The report filed by the Advocate Commissioners also clearly corroborates such stand taken by the Association. If the Housing Board would insist that a 40" wide road through two blocks, it is obvious that a substantial portion of already completed housing complex would be required to be demolished. The obvious intention of the Housing Board is to construct houses so that such houses may be used by needy persons. The Housing Board does not have profit motive and the main purpose is to provide houses to the needy people. The fact that the housing complex has already been constructed and is under the occupation of certain employees belonging to lower middle class or may be even upper middle class, cannot be lost sight of. There is no denial of the power of eminent domain of the State for acquiring the land. The State Government has power / right to acquire such land under the appropriate Land Acquisition Act. However, while considering such aspect, the Government is required to keep in view the pros and cons of a particular proposal.

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18. In the present case, by the time the land acquisition proceedings was initiated by issuing notification under Section 4(1), it is apparent that construction activity had already commenced and in fact progressed to considerable extent. I do not find any justification in depriving a group of persons and construct another hosing scheme for a similar set of persons. This aspect has never been considered by the State Government while insisting upon the acquisition of the entire property. On the other hand the Housing Board in its wisdom had agreed to exempt a particular property, but unfortunately, the State Government had raised certain query. When the Housing Board itself was satisfied about the merit of the contentions raised by the members of the Association, it is not understood as to why the State Government had raised unnecessary objections. It is also important to emphasise that at that stage the main objection raised by the State Government was relating to payment of developmental charges by the members of the Association. Whether developmental charges is payable or not is a matter which need not be decided here. If the members of the petitioner's Association are required to pay any developmental charges, such action can always be taken by the appropriate authority in accordance with law. However, that should not have been made a ground to accept the suggestion of the Housing Board for exemption.

19. The other objection raised by the State Government at that stage was relating to the question of access. In course of hearing, the Advocate Commissioners had visited the place and have submitted a report. The report indicates about the existence of a road which atleast extends upto a place very near to the vacant place meant for the Housing Board. In this connection, the lay-out, which has been submitted by the Housing Board and had been approved by MMDA (presently CMDA) on 18.9.1989 indicates as if there is a 40" wide road which was available atleast upto the land allotted to Guild of Service by the Government and even abutting the land belonging to RBI Employees Association and the vacant land on the Southern side. It is of course true that it has been contended by the counsel for the Respondent No.5 that such road is only a temporary road and not a pacca road. I do not think this objection can be considered as an insurmountable obstacle for the purpose of carrying out the construction of housing complex belonging to the Housing Board. It is obvious

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that if the Housing Board and the Government and other authorities like C.M.D.A., or Corporation of Chennai put their heads together, a workable alternative access road can always be found out.

20. In the result, the writ petition is allowed. The land acquisition notification under Section 4(1) and declaration under Section 6 of the Land Acquisition Act, so far as these relate to R.S.No.3189, are quashed. It is further declared that so far as R.S.No.3185 is concerned, even though there is no necessity to quash the land acquisition proceedings, such land can be used only as a public road by all concerned, including the petitioner Association, the Housing Board and all other respondents. There would be no order as to costs.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

dpk

To

1. The State of Tamiil Nadu,
   rep. by its Secretary to Govt.,
   Housing & Urban Development
   Department, Madras 9.

2. The Chairman-cum-Managing Director,
   Tamil Nadu Housing Board,
   Nandanam, Anna Salai,Madras 600 035.

3. The Special Tahsildar (III)
   Land Acquisition,
   Tamil Nadu Housing Board, Mogappair, Madras.

4. Member Secretary,
   Chennai Metropolitan Development Authority, Chennai.

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5. The Commissioner,
   The Corporation of Chennai, Chennai.

+1cc to Mr.T.Mohan,Advocate SR.No.23626

+1cc to Mr.K.A.Ravindran,Advocate SR.No.23825

+1cc to Mr.C.Ravichandran,Advocate SR.No.23783

+1cc to Mr.D. Veerasekaran,Advocate SR.No.23790
JE(CO)
kaa 16.06

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13-06-2005

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